IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

MACA.No. 335 of 2003()

OPMV.775/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR

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APPELLANT/PETITIONER

SOBHA N.C. W/O.MONY K.K.,
KALATHITHARA HOUSE, KARUTHEDAM,
MALIPPURAM P.O.

BY ADV. SRI.K.I. ABDUL RASHEED
SMT. SREELEKA S.KUMAR

RESPONDENTS/ RESPONDENTS:
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1. MAHILAMANI P.N.,
PALLATHU HOUSE, CHOWARA
ERNAKULAM DISTRICT.

2. DILEEP, S/O. SURBAN, KUNJUVEETTIL,
ELAMKUNNAPUZHA.

3. THE UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFFICE, NO.III, SHARANYA, HOSPITAL ROAD,
ERNAKULAM- 682011

R1 BY ADV. SRI.A.MOHAMED MUSTAQUE
ADV. SRI.K.MOHANDAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

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M.A.C.A No. 335 OF 2003

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Dated this the 13th December, 2006

J U D G M E N T

The claimant in O.P.(MV) 775 of 2000 on the file of the Motor Accidents Claims Tribunal, North Paravur is the appellant. By the impugned award, the Tribunal awarded a sum of Rs. 13,000/- as compensation to the appellant/claimant. However, in paragraph 17 of the judgment, it was held that the 2nd respondent, driver of the autorickshaw, was not having a valid driving licence at the time of the accident and therefore the third respondent is not liable to indemnify the first respondent, the insured. This finding of the Tribunal is not correct in view of the decision in **National Insurance Co. Ltd. vs. Swaran Singh** (**2004 (1) KLT 781**) wherein it was held that mere absence, fake or invalid licence or disqualification of the driver are not in themselves defences available to the insurer against either the insured or the third parties. It was held that the Insurance Company will be liable to satisfy an award in such cases. However, the Insurance Company would be entitled to recover the award amount from the owner of the vehicle when the insurer could establish breach of terms of policy on the part of the owner of the vehicle.

2. The finding of the Tribunal is that the owner of the vehicle allowed the second respondent to drive the vehicle when the second respondent was not having a valid driving licence at the relevant time and therefore the third respondent insurer is absolved from indemnifying the 1st respondent insured. As stated earlier, this finding is unsustainable.

In the result, the M.A.C.A. is allowed in part. The award of the Tribunal in respect of point No. 4 holding that the Insurance Company is not liable to indemnify the insured, the first respondent is set aside. The third respondent, the United India Insurance Company Ltd., would be liable to pay the award amount to the claimant in the first instance. However, as held in **National Insurance Co. Ltd. vs. Swaran Singh** (**2004(1) KLT 781**), the third respondent may recover from the first respondent the award amount paid by it. The award of the Tribunal is modified to the extent indicated above. The third respondent shall deposit the award amount within a period of two months.

K.T. SANKARAN,
JUDGE.

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